

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

01 NOV 20 PM 3 29

In Re: Complaint of Access Integrated
Network, Inc. Against BellSouth
Telecommunications, Inc.

) OFFICE OF THE
) EXECUTIVE SECRETARY
) Docket No. 01-00868 -

)
) Complaint of XO Tennessee, Inc.
) Against BellSouth Telecommunications,
) Inc.
)

MOTION TO COMPEL RESPONSES TO DISCOVERY

Access Integrated Network, Inc. ("AIN") and XO Tennessee, Inc. ("XO") ask that the Tennessee Regulatory Authority ("TRA") compel BellSouth Telecommunications, Inc. ("BellSouth") to respond fully to interrogatory no. 10 which states as follows:

REQUEST: List, on a customer by customer basis, all goods, services or benefits of any kind provided by BellSouth Select, Inc. to any Tennessee customer. In your response, provide the estimated monetary value of those benefits to each customer.

The following is BellSouth's response:

RESPONSE: BellSouth objects to this request on the grounds that it is overly broad, that responding to it would be unduly burdensome, and that it is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving these objections, the Tennessee's customers listed in the attachment to Item No. 9 are earning points under the offering that is described in BellSouth's Response to Item 2 of the Staff's Data Requests (which was inaccurately described by certain sales personnel as including "free" or "complimentary" months of service). Some of these customers have had some of the points that they have earned applied to their BellSouth bills in the form of credits, the dollar value of which is set forth in the attachment to Item No. 9. Customers will be able to redeem their remaining points in the future, but not as credits to their bills.

The interrogatory asks that BellSouth disclose all the non-tariffed benefits which BellSouth has provided to customers in exchange for the purchase of BellSouth's regulated and

unregulated services. The purpose of the question is to discover the extent to which BellSouth, through an unregulated affiliate, has engaged in a systematic, region-wide scheme of offering and providing non-tariffed rebates to customers in exchange for the purchase of BellSouth's regulated telecommunications services.

BellSouth has unilaterally decided to limit its answer to only those Tennessee customers who were offered and accepted "the offering that is described in BellSouth's Response to Item 2 of the Staff's Data Requests." That "offering" involved giving certain BellSouth customers "bonus Select points" which, the customer was told, could be redeemed for three months of free telephone service.

BellSouth's partial answer is inadequate. For nearly two years, BellSouth has apparently been offering non-tariffed rebates as an incentive to keep existing customers and win back old ones. In some cases, the company offered rebates in the form of a credit on the customer's telephone bill. In other cases, the customers were offered non-monetary benefits such as pagers, telephones, travel awards, televisions, and other goods. After these complaints were filed, BellSouth began offering rebates in cash as an alternative to credit on the customer's bill.

As AIN and XO have previously noted, state law and the rules of the TRA require BellSouth to charge no more and no less than the tariffed rates approved by the TRA. For example, T.C.A. 65-4-122 prohibits the use of any "rebate, drawback, or other device" as a means to charge, "directly or indirectly," more to one customer than another. The purpose of the statute, which is as old as state regulation in Tennessee, is to prevent carriers from unfairly favoring some customers over others. *See, Dunlap Lumber Co. v. Nashville, Chattanooga, & St. Louis Railway Co.*, 165 S.W. 224 (1913). Since late 1999, BellSouth has apparently been engaged in precisely the kind of conduct which the statute prohibits. Each such rebate which is provided in exchange for the purchase of regulated services is a criminal offense and, pursuant to T.C.A.

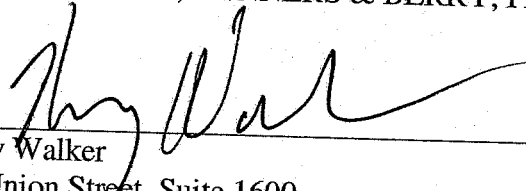
65-3-120, must be reported by the TRA to the District Attorney General. Furthermore, the use of an unregulated affiliate to funnel these rebates to customers of BellSouth's regulated services plainly constitutes "cross-subsidization," a "preference to competitive services" and an "anti-competitive practice," all of which are prohibited by T.C.A. 65-5-208(c). Finally, the use of these non-tariffed rebates renders meaningless the statutory requirement that BellSouth's regulated services must be priced above cost as well as the cost-of-service data which BellSouth files with the TRA to demonstrate compliance with that requirement.

In order for the TRA and the parties to discover the scope of BellSouth's rebate program, BellSouth must fully answer Request No. 10 and provide a complete list of all "goods, services, or benefits" provided to any Tennessee customer in exchange for the purchase of regulated services and an estimate of the monetary value of those benefits.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

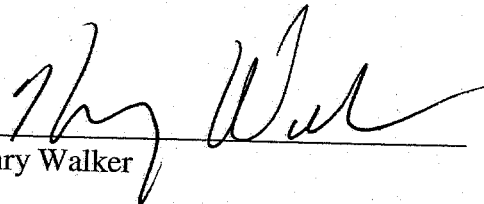
By: _____


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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 20th day of November, 2001.

Guy Hicks, Esq.
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Henry Walker